IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIFTEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 22624 of 2003

Between:

Nahar Singh, S/o Aho Ram Singh
GC CRPF, RR District.

..... PETITIONER

AND

1 Union of India rep by Inspector General of Police CRPF, New Delhi.
2 The Addl. Deputy Inspector General of Police, GC, CRPF, RR District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a appropriate writ, order or direction more particularly one in the nature of writ of Mandamus, call for the records relating to and connected with the proceedings no. M.III 1/03-EC-I, dt 16-10-2003 and set aside the same holding it absolutely illegal, arbitrary, unconstitutional and violative of Principles of Natural justice and consequently direct the respondents to restore the services of the petitioner by granting continuity of service as Head Constable and grant all the service benefits including service benefits, arrears of salary and increments in the interest of justice.

Counsel for the Petitioner: MR.PRATAP NARAYAN SANGHI

Counsel for the Respondents: SRI B.NARAYAN REDDY,

CENTRAL GOVERNMENT STANDING COUNSEL

The Court made the following:

ORDER:

This writ petition is filed seeking a writ of Mandamus declaring the proceedings No.M.III.1/03-EC-I, dated 16.10.2003, of the respondents as illegal and arbitrary, and consequently, to direct the respondents to restore the services of the petitioner by granting continuity of service as Head Constable in Central Reserve Police Force (hereinafter referred to as CRPF).

The brief facts necessary for disposal of the writ petition is as follows: -

It is the case of the petitioner that he had rendered more than 20 years of service in the respondent-Organisation as of today. While so, he alleges some reasons for his victimization and after thorough examination in Nizams Institute of Medical Sciences (hereinafter referred to as NIMS) some variation was found in the working of his heart and since 1997 onwards he was on medicines. Subsequently, the Medical Board declared him unfit for duty on the ground that he is suffering from Cardiac problem and issued the impugned proceedings invalidating him from service. He states that he also underwent examination in NIMS and the Cardiologist found him fit for normal active duty.

In a nut-shell, the grievance of the petitioner is that the Medical Board does not consist of an expert Cardiologist or Cardio thoracic Surgeon to declare him unfit based on the medical reports and as such, the impugned proceedings passed by the respondents based on the opinion of the Medical Board is not sustainable. He also challenges the action of the respondents in treating the period of his absence from duties as extra-ordinary leave.

The respondents filed counter-affidavit, *inter alia*, the allegations made by the petitioner. It is their case that as the petitioner was suffering from coronary artery disease, he was referred to Medical

Board and based on the reports of the petitioner given by Cardiologist, the Medical Board found him unfit for combatant duties, and as such, his services were invalidated with effect from 16.10.2003. Therefore, the impugned proceedings is strictly in accordance with law.

An additional counter-affidavit is also filed bringing into light the various facts regarding the grant of initial interim suspension of invalidation order by this Court, vacating of the same, and as per the directions this Court, the petitioner submitting a medical fitness certificate, and thereafter pursuant to the order, dated 09.12.2004, the petitioner rejoining into service, etc. The additional counter also shows as to how the period of absence of the petitioner from service was regularised.

A reply-affidavit is filed by the petitioner substantiating the contentions made in the writ-affidavit and denying some of the allegations made in the additional counter-affidavit.

The learned counsel for the petitioner contended that the Medical Board which examined the writ petitioner does not consists of any Cardiologist so as to assess the disability of the petitioner and that when the petitioner was referred to NIMS, he was found medically fit for discharging his duties. Therefore, for no fault of the petitioner, he was removed from service without providing alternative employment. He further contended that after Contempt Case is filed, the petitioner was again referred to the Medical Board and thereafter, based on the certificate issued by Base Hospital, CRPF, Hyderabad-II, he was reinstated into service but the period from the date of removal till the date of reinstatement was to some extent treated as extraordinary leave on medical grounds and some period as extraordinary leave as not qualified for any purposes. Therefore, it is a total non-application of mind by the Medical Board in invalidating

the petitioner on the medical grounds and prays to allow the writ petition.

On the other hand, the learned standing counsel for the respondents vehemently contended that after taking into consideration the opinion of the Medical Board, the petitioner was removed from service. The Medical Board consists of three experts and no mala fides are attributed against them. They have no reason to order removal of the petitioner on medical grounds. It is not an arbitrary exercise of powers and that based on the medical reports of the petitioner, the Medical Board has rightly recommended for termination of the petitioner since the nature of duties of the CRPF constable is such that hard work is necessary. Hence, the order under challenge does not suffer from any infirmities so as to call for interference of this Court and the respondents have rightly treated the period from the date of dismissal till the date of reinstatement to that of the leave available to the credit of the petitioner and therefore, there are no grounds to interfere with the impugned proceedings.

The Standing Order No.7/99, dated 06.05.1999, governs the discharge of police personnel on the grounds of ill-health. As per Clause-2, the department has three categories of disabled personnel: -

1. Those who are disabled due to injuries sustained in action against terrorist/anti-social elements.

2. Those who are disabled due to sickness/accident.

3. Those who are disabled due to psychiatric disease.

In the instant case even as per these rules, the sick/injured person should be given full medical treatment at Unit level, in Civil

Hospital and GC, Hospital/Base Hospital. After the sick/injured person has received full medical treatment and the Medical Officer In-charge is of the opinion that the individual is not fit for normal active duty, the case of the individual should be referred to the Departmental Board for rehabilitation by the Unit concerned.

So, even as per the rules relied upon by the learned counsel for the respondents, when an individual is not fit for normal active duty, then only he can be referred to Departmental Board for rehabilitation. Admittedly, the petitioner was suffering with coronary artery disease, therefore he was directed to take Voluntary Retirement, failing which he will be invalidated on the medical grounds. Further, the petitioner was directed to appear before the Medical Board. The Medical Board gave the opinion that reads as follows: -

> "No.831160694 HC/CD Nahar Singh Had history of chest pain on 08.12.1997 was admitted at G.B.Pent Hospital, New Delhi and diagnosed as coronary artery disease of left Anterior descending artery with small left ventricular apical aneurysm and anterior well myocardial infarction.
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> Again had fresh chest pain and syncope on 14.02.2002 was admitted at (1) Govt. Medical College, Jammu (2) Composite Hospital, Jammu and (3) PGIMER, Chandigarh. He is undergoing frequent follow-ups at Base Hospital-II, CRPF, Hyderabad, and also at NIMS, Hyderabad. He is still symptomatic during his ordinary physical activity and was declared unfit for active field duty by the DRB on 10.06.2003. This invalidation board has examined the individual and all available medical documents and found that he is not fit for combatant duties".

Therefore, even the Medical Board did not opine that the petitioner was unfit for discharging normal active duties but found that he was unfit for combatant duties. No mala fides are attributed to the Medical Board consisting of three experts but the only ground urged is that it does not consist of Cardiologist. Merely this does not mean that the Medical Board has arbitrarily exercised its power in

invalidating the petitioner. It has taken into consideration the reports of the petitioner from various hospitals including the certificate issued by NIMS. The fact remains that the petitioner was suffering with coronary artery disease since 1997. Even the certificate, dated 23.04.2004, issued by the Assistant Professor of Cardiology, NIMS, Hyderabad, shows that he can be made fit for duty. The medical certificate issued by the Assistant Professor of Cardiology counter signed by the Medical Superintendent also goes to show that the petitioner is fit to continue in the existing post in the CRPF. At the time of examination by the Board, the petitioner was not having the active cardiac problem. Based on the report furnished by the Medical Board, the competent authority ordered invalidation of the petitioner from service with effect from 16.10.2003 and accordingly, his claim was struck off from the strength of Group Centre, CRPF, Ranga Reddy, from the same date. Again the petitioner underwent examination by Base Hospital-II, CRPF, Hyderabad, wherein the doctor declared the petitioner fit in the endurance test. Based on the same, the petitioner was directed to rejoin duty by proceedings dated 09.12.2004.

As regards the contention of the learned counsel for the petitioner that the respondents ought to have provided alternative employment or job to the petitioner as per Sections-45 and 47(1) of the Disabilities Act, it is to be seen that though the petitioner was not provided an alternative job, he was reinstated into service duly protecting his survival. Merely, due to the above said fact it cannot be said that the action of the respondents is arbitrary and there is discrimination. Based on the medical reports only, the Medical Board has came to a conclusion that the petitioner was unfit for discharge of his duties.

The only question remains to be answered is whether by virtue of the proceedings, dated 04.04.2005, the period from 25.01.2004 to

30.06.2004 can be treated as extra-ordinary leave on medical grounds and the period from 01.07.2004 to 29.12.2004 as extra-ordinary but not qualifying services for all purposes.

The action of the respondents is to some extent not in accordance with rules and regulations governing the cases of invalidation on medical grounds. There was no fault on the petitioner and admittedly, he was suffering with coronary artery disease and did not work from 25.01.2004 to 29.12.2004 i.e., nearly for a period of one year.

It seems that there is no other leave available to the credit of the petitioner. Therefore, the same is to be treated as extra-ordinary leave. If any negligence or lapses is attributed to the petitioner, then the period can be taken as extra-ordinary leave. But, there are no lapses on the part of the petitioner, hence the period from 25.01.2004 to 29.12.2004 can be regularised as follows: -

The said period shall be taken as continuity of service without any monitory benefits and also for all purposes like granting notional increments, etc.

It is brought to the notice of this Court by the learned counsel for the petitioner that after removal from service, the petitioner on his own accord or at the instance of the Court and also at the instance of the respondents, underwent some tests and incurred expenses. Since the period from removal till reinstatement is treated by this Court as continuity of service, the petitioner is entitled to reimbursement of those amounts as per the Rules.

Therefore, with the above observations, the writ petition is

allowed to the extent indicated above. No order as to costs.

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(K.C.BHANU, J)

15.07.2005

dr

To

1 The Inspector General of Police, CRPF, Union of India, New Delhi
2 The Additional Deputy Inspector General of Police, GC, CRPF, RR District

3 2 CD copies

4 1 CC to MR.PRATAP NARAYAN SANGHI